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CLEARINGHOUSE RULE 96-184

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. Newly created language in SECTION 1 incorporates by reference nutritional standards based on the recommended dietary allowances of the National Research Council. Section 2.08 (1), Manual, provides that an agency may incorporate standards by reference with the consent of the Attorney General and the Revisor of Statutes. The Manual further provides that the analysis to the rule must indicate that consent has been given. If consent has been given for use of the National Research Council standards, that fact should be noted in the analysis to this rule. If that consent has not been obtained, it must be obtained in order to incorporate the standards by reference in this rule.

Also, in SECTION 1, the “DOC 309.23” before “(2),” “(3),” “(4)” and “(5)” can be deleted.

b. In SECTION 6, the treatment language which provides for the repeal of s. DOC 309.38 (3) (b) and the recreation of that language in s. DOC 309.24 (3) (b) is incorrect. The proper treatment language for this SECTION is: “DOC 309.38 (3) (b) is repealed.” The creation of s. DOC 309.24 (3) (b) must occur in a separate numbered SECTION to precede the material in current SECTION 1, in order to preserve ascending numerical order of treated rule sections. The treatment language for that SECTION should be: “DOC 309.24 (3) (b) is created to read:”. Comments 2. d., 2. e. and 2. f. also pertain to items which must be moved to different SECTIONS to preserve numerical order. These shifts will cause existing SECTIONS to be renumbered as well.

c. Sections DOC 309.23 (2), 309.24 (3) (b) and (f) and 309.25, as renumbered, refer to “written policies” of the institution or “policies and procedures” of the administrator or the

warden. To the extent these “written policies” or “policies and procedures” meet the definition of the term “rule” in s. 227.01 (13), Stats., they should be promulgated as administrative rules under the procedures provided in ch. 227, Stats.

d. The placement of the creation of s. DOC 309.24 (3) (e) in SECTION 10 is incorrect; it should be placed in SECTION 2, in order to maintain correct ascending numerical order. Also, in SECTION 10, the word “shall” on line 1 should be changed to “may.” [s. 1.01 (2), Manual.]

e. The treatment language to SECTION 11 has the same problem as the treatment language to SECTION 6, as discussed in comment 2. b. The only treatment language which should be in this SECTION is the repeal of s. DOC 309.38 (3) (f). The creation of s. DOC 309.24 (3) (g) should occur in SECTION 3 to maintain ascending numerical order. Also, with regard to the language currently in SECTION 11, the language should be rewritten in the active voice, as follows: “An institution may require new identification photographs of any inmate whose appearance changes.”

f. The treatment language in SECTION 12 is also incorrect. This SECTION should contain only the repeal of s. DOC 309.39. There is a problem with placing the newly created language relating to maintaining orderly and clean living quarters in s. DOC 309.25, as there is already an s. DOC 309.25, relating to access to judicial process, legal services and legal materials. Is this an erroneous reference to s. DOC 309.25, or does the department intend to move the language currently contained in s. DOC 309.25 to another location? If the intent is to place the newly created language in s. DOC 309.25, the existing language of that SECTION must first be renumbered, in SECTION 4. Then, s. DOC 309.25 can be created, in SECTION 5.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In SECTION 1 of the rule, the renumbered s. DOC 309.23 (1) provides that “(t)he sanitation requirements set by the department shall also be satisfied” (emphasis added). Is this a reference to the Department of Health and Family Services or to the Department of Corrections? If it is the former, the full name of the department should be provided. If it is the latter, reference to the “department” is appropriate.

b. In SECTION 6, s. DOC 309.38 (3) (b) is repealed. That provision currently states that there should be no limit on the growth of mustaches or beards or the length of the hair provided the style of wear does not cover the eyes. Both the repealed provision and the new language should be explained in the analysis to the rule, so that it is clear to the reader that a substantive change is being made in this provision.

c. In SECTION 8, the phrase “be required to” on lines 2 and 3 is extraneous and could be deleted.

d. In SECTION 9, the word “are” on line 1 should be changed to “is,” for agreement with the word “use.” Also, is the warden a different individual from an institution’s superintendent? If so, the term “warden” should be defined. If not, the word “superintendent” should be substituted for “warden.”